

Remarks

Claims 1-11 are currently pending in the subject application. Claims 7-11 have been withdrawn per an election filed June 8, 2006. Claim 1 has been amended to clarify that the step of introducing an anvil adapted for use with the anastomosis instrument through a side region of the upper stomach portion pertains to the upper stomach portion that has been isolated. Furthermore, claim 3 has been amended to correct the spelling of the word reticulated. Such amendments do not limit the scope of the claims. Upon entry of the foregoing amendments, claims 1-6 will be before the Examiner for review.

Claim 3 is objected to for the misspelling of the word reticulated. Applicant asserts that the amendment to claim 3 above obviates this rejection. Reconsideration is requested.

Claims 1-6 are rejected under 35 USC §103(a), as being anticipated by US 2004/0087977 (Nolan application) in view of Pietrafitta et al. (U.S. Patent No. 5,355,897, Pietrafitta patent). Applicant respectfully traverses. As noted in the office action, the Nolan application does not teach a method involving “introducing an anvil adapted for use with the anastomosis instrument through a side region of the upper stomach portion. . .” (emphasis added). Applicant agrees. However, Applicant respectfully disagrees with the office action citing to the Pietrafitta patent in an attempt to cure this noted deficiency. Applicant asserts that a careful reading of the Pietrafitta patent leads to the emphatic conclusion that the Pietrafitta patent does not reasonably teach the introduction of an anvil through an isolated upper stomach portion. The Pietrafitta patent pertains to a pyloroplasty/pylorectomy procedure which is an entirely different procedure than a gastric bypass surgery. As clearly taught by the Pietrafitta patent, there is no step that even involves the isolation of an upper stomach portion. In fact, this would be considered disastrous for pyloroplasty, which aims to keep the stomach intact so that it can be connected to the duodenum. See Col. 1, line 58-Col. 2, line 2. It cannot be fairly said that the Pietrafitta patent teaches, suggests or motivates the insertion of an anvil through an isolated upper stomach portion, as this would run counter to the purpose and conventional techniques of pyloroplasty taught by the Pietrafitta patent itself.

Accordingly, since the cited art does not provide a requisite teaching or suggestion of a critical element of the claim 1, Applicant asserts that claim 1 cannot be obvious over the cited art.

In addition to the foregoing reasoning, it is telling that the primary Nolan reference, which presumably represents the most relevant and closest prior art in the area of gastric bypass surgery, does not contemplate the introduction of an anvil through a side region of an isolated upper stomach portion. Nolan et al. failed to contemplate this even though the cited Pietrafitta patent was available in the prior art for nearly 10 years before the filing of the Nolan application. This underscores the fact that the procedure of claim 1 represents a new and fresh approach to gastric bypass surgery, not previously before thought of, which also avoids many of the complications associated with this surgery.

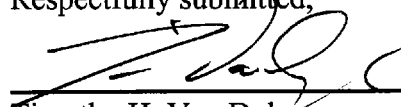
Further, with respect to the reasoning applied to claim 3 found at the bottom of page 3 of the office action, Applicant notes that the Pietrafitta patent could teach placing a surgical instrument into an isolated upper stomach portion, for a reason similar to that discussed above: the Pietrafitta patent simply does not teach isolating an upper stomach portion. If this is not taught by the Pietrafitta patent, it cannot be legitimately said that there is any teaching of placing a surgical instrument into an anatomical structure that is not created or involved in the surgical procedure to which the Pietrafitta patent pertains.

In view of the foregoing remarks, and amendments to claim 1, Applicant respectfully asserts that claim 1 and claim 3 (for additional reasons) are not rendered obvious by the combination of the Nolan application and Pietrafitta patent. Furthermore, as claims 2 and 4-6 depend from claim 1, they are construed to contain the limitations of claim 1. Thus, for reasons which apply for claim 1, claims 2 and 4-6 cannot be rendered obvious by the cited art. Applicant respectfully requests reconsideration and withdrawal of this 35 USC § 103(a) rejection.

Applicants believe that all claims are in a condition for allowance, and request that a Notice of Allowance be issued. Applicants invite the Examiner to call the undersigned if clarification is needed on any aspect of this response. In addition, the Applicants request that the Examiner call the undersigned to arrange a telephonic

interview if the Examiner believes that not all grounds for rejection have been addressed and overcome.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Timothy H. Van Dyke', is written over a horizontal line.

Timothy H. Van Dyke

Reg. No. 43,218

Beusse, Wolter, Sanks, Mora & Maire P.A.

390 N. Orange Avenue, Suite 2500

Orlando, FL 32801

Phone: (407) 926-7726